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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
1993 Annual Access Tariff Filings )  
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GSF Order Compliance Filings )  
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In the Matter of )  
1994 Annual Access Tariff Filings )  
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In the Matter of )  
1995 Annual Access Tariff Filings )  
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In the Matter of )  
1996 Annual Access Tariff Filings )

CC Docket No. 93-193  
Phase I, Part 2

CC Docket No. 94-65

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Petition for Reconsideration

Pursuant to Section 1.106 of the Rules of the Federal Communications Commission ("Commission"), GVNW, Inc./Management ("GVNW") hereby files this petition for reconsideration of the April 17, 1997 Memorandum Opinion and Order ("MO&O")<sup>1</sup> in the above-captioned proceeding.<sup>2</sup> As indicated herein, the findings made

<sup>1</sup> In the Matter of 1993 Annual Access Tariff Filings; GSF Order Compliance Filings; In the Matter of 1994 Annual Access Tariff Filings; In the Matter of 1995 Annual Access Tariff Filings; In the Matter of 1996 Annual Access Tariff Filings, CC Docket No. 93-193, Phase I, Part 2, CC Docket No. 94-65, Memorandum Opinion and Order, FCC 97-139, rel. April 17, 1997.

<sup>2</sup> The MO&O required that Local Exchange Carriers ("LECs") which participated in the National Exchange Carrier Association, Inc. ("NECA") common line pool and also filed their own traffic sensitive access rates under Section 61.39 of the Commission's Rules in the 1993 access tariff filing respond to certain questions regarding those filings. On May 1, 1997, GVNW made that filing on behalf of the affected LECs/issuing carriers in GVNW's Tariff FCC No. 2, as well as Union Telephone Company. See GVNW's Response to FCC GSF Order, CC Docket No. 93-193, filed May 1, 1997 ("GVNW Response"). The issues raised in the instant petition are substantially the same as those raised in the GVNW Response. Accordingly, the GVNW Response is incorporated herein by reference.

within the MO&O regarding Section 61.39 filing LECs<sup>3</sup> depart from long-standing Commission policy and the specific language of its Rules.<sup>4</sup> In establishing Section 61.39 procedures, the Commission specifically rejected prospective adjustments made to the cost study period, i.e., "known and measurable changes." Without explanation, however, the MO&O specifically requires this approach for the 1993-95 tariff period with respect to the allocation of General Support Facility ("GSF") costs. This radical departure from the Commission's Small Company Order should be reconsidered and reversed. Were Section 61.39 to be changed in the manner contemplated by the MO&O, thereby permitting "known and measurable changes" for this tariff period, all "known and measurable changes" during this period should be permitted.

GVNW (on behalf of its client companies) has assisted with the filing of interstate access rates based on the specific requirements of Section 61.39, including the period of time pertinent here. In making these filings, GVNW is required to follow the specific directives of Section 61.39 of the Commission's Rules:

(1) For a tariff change, the local exchange carrier that is a cost schedule carrier **must** propose Traffic Sensitive rates based on the following:

(i) For the first period, a cost of service study for Traffic Sensitive elements for the

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<sup>3</sup> See, e.g., MO&O at paras. 48-49 (statements regarding "double recovery" of general support facility costs for Section 61.39 companies participating in the NECA common line pool).

<sup>4</sup> See 47 C.F.R. § 61.39. Section 61.39 was established in the Commission's "Small Company Order." See In the Matter of Regulation of Small Telephone Companies, CC Docket 86-467, Report and Order, 2 FCC Rcd 3811 (rel. June 29, 1987).

most recent 12 month period with related demand for the same period.

(ii) For subsequent filings, a cost of service study for Traffic Sensitive elements for the total period since the local exchange carrier's last annual filing, with related demand for the same period.<sup>5</sup>

Moreover, GVNW was required to follow the specific policy directives of the Commission in implementing Section 61.39. These policies were based, in part, on the finding by the Commission that small company earnings might fluctuate from year to year and that excess earnings in one year would be offset by reduced earnings in future years.<sup>6</sup> Nonetheless, the Commission found that this delay would not systematically bias rates or create significant inequities.<sup>7</sup>

In adopting these policies, however, the Commission specifically rejected the use within the historical year of certain prospective adjustments made to the cost study period, i.e., "known and measurable changes." Adopting this approach would "present most of the same issues as a normal filing with far less assurance that the rates can be considered prima facie reasonable and self-

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<sup>5</sup> 47 C.F.R. § 61.39(b)(1) (emphasis added).

<sup>6</sup> Small Company Order at para. 16 (self correcting nature of Section 61.69 filing). These periodic fluctuations in demand, expenses, investment, separations rules or access rules do not, however, in the long term, produce excessive or insufficient earnings. Historic rules simply create a delay in realizing the benefit or detriment of these changes.

<sup>7</sup> Id. "While we recognize that some delay will occur between events that arise during the rate period and subsequent rate changes, we do not believe that the delay would systematically bias rates or that the delay is so significant as to warrant revising the rules as suggested."

correcting."<sup>8</sup> The Commission also noted its concern that "[a]n exchange company might propose to implement only 'known and measurable' changes that benefit it, not those which benefit end users and interexchange carriers. . . ."<sup>9</sup>

Under both the Commission's specific rules and policies, therefore, separations rule changes could not be reflected by a Section 61.39 filing company until the appropriate historical period. The MO&O undermines this long-standing Commission policy by requiring Section 61.39 companies to reflect an out-of-period separations rule change, GSF cost allocation, without reconciling this requirement with the Commission's past pronouncements in the Small Company Order. GVNW is concerned that the Commission's policies expressed in the Small Company Order cited above have been undermined by the MO&O's imposition of "known and measurable changes" to the sole benefit of the Interexchange Carriers ("IXCs").<sup>10</sup>

GVNW submits that imposing the requirements of the MO&O is contrary to, and an unexplained departure from, established

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<sup>8</sup> Id. "But a hybrid filing using some historical data and some prospective data would present most of the same issues as a normal filing, with far less assurance that the rates can be considered prima facie reasonable and self-correcting."

<sup>9</sup> Id.

<sup>10</sup> GVNW recognizes that if a company files traffic sensitive access rates under Section 61.39 and also participates in the NECA common line tariff, there are always discontinuities between the two filings. Investments, expenses, demand, and separations and access rules will likely differ between the two filings. Depending on the nature of those differences, they may temporarily provide advantage or disadvantage to the LEC or to its IXC customers. These fluctuations, however, were recognized by the Commission and rejected in its pronouncement to disallow the use of "known and measurable changes."

Commission rules and policies. Accordingly, GVNW respectfully submits that the MO&O with regard to the Section 61.39 companies be reconsidered and reversed.

In the alternative, were the Commission to change Section 61.39 in a manner contemplated by the MO&O and require application of "known and measurable changes" to the historical period, GVNW respectfully submits that all such changes be reflected for the period at issue.<sup>11</sup> This will ensure proper and consistent application of the Commission's rules to affected LECs, and will ensure that "known and measurable changes" are applied in a manner that does not favor IXCs over a Section 61.39 LEC or end users of the IXC's service.

Respectfully submitted,

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<sup>11</sup> GVNW notes that other changes, including separations changes (particularly the factors allocating subscriber plant and central office equipment) were being made during the tariff period addressed in the MO&O. For example, as required by Section 61.39, the separations rules applicable in the historical cost study period were used rather than those that would be applicable in a prospective period based on the Commission's specific determination that "known and measurable changes" should not be reflected in the historical period. This process has generally been to the benefit of IXC customers since the allocations of central office equipment were generally increasing during this period due to the separations rules changes. No IXC complained that this was an inappropriate application of the historical rules.

**CERTIFICATE OF SERVICE**

I, Colleen von Hollen, of Kraskin & Lesse, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that on this 19th day of May, 1997, a copy of the foregoing "Petition for Reconsideration" on behalf of GVNW Inc./Management, was served by first class, U.S. mail, postage prepaid, to the parties on the attached pages:

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